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No. 82-1970

In the Supreme Court of the United States

OCTOBER TERM, 1982

FEDERAL LABOR RELATIONS AUTHORITY, PETITIONER

v.

FLORIDA NATIONAL GUARD AND DEPARTMENT OF DEFENSE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

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Petitioner contends that Title VII of the Civil Service Reform Act of 1978, 5 U.S.C. (Supp. V) 7131(a), requires that a federal agency pay a per diem allowance and travel expenses to employee union representatives engaged in collective bargaining with the agency.

The Florida National Guard is a state militia, federally administered by the National Guard Bureau of the Department of Defense. See 10 U.S.C. 3015. National Guard technicians are employed to meet day-to-day administrative, training, and logistical needs of the Guard (Pet. App. 3a n.3). Under the National Guard Technicians Act of 1968, 32 U.S.C. (& Supp. V) 709, Guard technicians were converted to the status of federal civilian employees of the Department of Defense, although administration of the Guard program was retained by the various state adjutants general.

Respondent Florida National Guard and the National Association of Government Employees were parties to a collective bargaining agreement that expired in January 1978. While negotiating a new agreement, the parties reached a bargaining impasse and referred the dispute to the Federal Service Impasses Panel, which directed that a fact-finding proceeding be conducted in St. Augustine, Florida (Pet. App. 2a). Ronald Meier, a National Guard technician at Jacksonville, Florida, and president of the union local, attended two days of hearings on behalf of the union. Respondent Florida National Guard denied a request to grant Meier official time (*i.e.*, paid time) for his travel time (as opposed to the time spent at the hearings) and to pay his travel and per diem expenses for attendance at the hearings in his capacity as union representative (*id.* at 3a). The union filed an unfair labor practice charge with petitioner, the Federal Labor Relations Authority. Petitioner determined (*id.* at 15a-24a) that the Guard had committed an unfair labor practice and ordered it to grant official time and pay the disputed expenses. Petitioner concluded that the Civil Service Reform Act of 1978, 5 U.S.C. (Supp. V) 7131(a), requires a federal agency to pay travel expenses and per diem allowances to employee union representatives engaged in collective bargaining with the agency.

On petition for review of that decision, the court of appeals held (Pet. App. 1a-12a) that full deference to petitioner's interpretation of the statute was inappropriate and that petitioner had interpreted Section 7131(a) incorrectly.[1] Therefore, the court refused to enforce petitioner's order. The court of appeals noted (Pet. App. 2a) that its decision was in direct conflict with the decision of the Ninth Circuit

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[1]Respondents did not seek review of petitioner's conclusion that Meier was entitled to official time for the time spent traveling.

in *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, 672 F.2d 732 (1982), cert. granted, No. 82-799 (Jan. 17, 1983).

In *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, *supra*, the FLRA ordered the BATF to pay travel expenses and a per diem allowance to an employee union representative who had engaged in collective bargaining with BATF. The Ninth Circuit enforced that order, holding that the FLRA's interpretation of the Civil Service Reform Act of 1978, 5 U.S.C. (Supp. V) 7131(a), is correct. Thus, *Bureau of Alcohol, Tobacco and Firearms* presents the same issue that is raised in this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be held and disposed of in light of the decision in *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, No. 82-799.[2]

REX E. LEE
Solicitor General

JULY 1983

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[2]Petitioner also has filed petitions for writs of certiorari in two other cases in which the Second and Eighth Circuits refused to enforce petitioner's orders that federal agencies pay travel expenses and per diem of employee union representatives. *Division of Military and Naval Affairs* v. *FLRA*, 683 F.2d 45 (2d Cir. 1982), petition for cert. pending, No. 82-1021; *United States Department of Agriculture* v. *FLRA*, 691 F.2d 1242 (8th Cir. 1982), petition for cert. pending, No. 82-979. We have asked the Court to hold the petitions in these cases for disposition in light of the decision in *Bureau of Alcohol, Tobacco and Firearms* v. *FLRA*, No. 82-799.

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